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FURCRON *v.* GURKIN.

June 13, 1918.

[96 S. E. 199.]

1. **Boundaries (§ 37 (1)*)—Plats—Certificate of Clerk.**—The clerk's record of a plat need not be taken as a verity where the evidence clearly shows an omission therefrom.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 609.]

2. **Boundaries (§ 33*)—Actions—Burden of Proof.**—Plaintiff, who acquired title subsequent to defendant's acquisition of title to adjoining lot, and who brought ejectment against defendant to have dividing line corrected, had the burden of proving the location of the line.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 579.]

3. **Boundaries (§ 37 (1)*)—Evidence—Sufficiency.**—In ejectment to settle boundary, plaintiff's evidence on method of determining boundary, going only far enough to show that the boundary could be determined in one of two ways, but showing no reason for adopting theory giving land claimed to him, was insufficient as a matter of law to sustain verdict in his favor.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 609.]

4. **Boundaries (§ 40 (3)*)—Questions for Jury.**—Where the common grantors of plaintiff and defendant filed a plat showing the boundary lines and the dimensions in feet of each lot, it was error, in ejectment to determine the boundary, for the court to submit to the jury the construction of an agreement by the common grantors as to the location of the line, since the plat and the agreement showed conclusively where the line was intended to be.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 579.]

Error to Circuit Court of City of Norfolk.

Ejectment by John A. Gurkin against W. A. Furcron. Judgment for plaintiff, and defendant brings error. Reversed and remanded.

G. M. Dillard and *R. M. Hughes*, both of Norfolk, for plaintiff in error.

Wm. G. Maupin, *John B. Jenkins, Jr.*, and *G. Tayloe Gwathmey*, all of Norfolk, for defendant in error.

KING et al. *v.* HARTUNG.

June 13, 1918.

[96 S. E. 202.]

1. **Landlord and Tenant (§ 167 (5)*)—Injury to Pedestrian—Defective Gate.**—Where a wagon gate, having been negligently con-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.